

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANELL SMITH,

Petitioner,
v.

Civil No. 04-70961
Crim. No. 00-80762

UNITED STATES OF AMERICA,

Honorable John Corbett O'Meara

Respondent.
_____ /

ORDER DENYING CERTIFICATE OF APPEALABILITY

On July 26, 2004, this court denied petitioner Danell Smith's motion to vacate sentence under 28 U.S.C. § 2255. Petitioner filed a timely application for certificate of appealability. Pursuant to 28 U.S.C. § 2253(c)(2), the court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right.

[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner] or that the questions are 'adequate to deserve encouragement to proceed further.'

Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983); Hence v. Smith, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999).

In this case the court finds that Petitioner has not made a substantial showing of the denial of a federal right. Therefore, it is hereby **ORDERED** that the motion for certificate of appealability is **DENIED**.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: May 10, 2005